IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

S.B.CRIMINAL MISC. PETITION NO. 596/2006
(Satya Narain Vs. State of Rajasthan)

Date of Order : 18/09/2006

PRESENT
HON'BLE MR. JUSTICE H.R.PANWAR

Mr. Vipin Makkad for the petitioner.
Mr. Ashok Upadhyay, public prosecutor.

BY THE COURT:-

By the instant criminal misc. petition under Section 482 Cr.P.C., the petitioner has challenged the order dated 17.12.2005 passed by Sessions Judge, Hanumangarh (for short 'the revisional court' hereinafter), whereby the revision petition filed by the petitioner against the order dated 7.4.2005 passed by Additional Chief Judicial Magistrate, Hanumangarh (for short 'the trial court hereinafter) was dismissed.

I have heard learned counsel for the petitioner and public prosecutor for the State. Carefully gone through the orders passed by the courts below.

On a report lodged by petitioner, the police lodged FIR No. 419/04. After investigation, the police came to the conclusion that no such occurrence took place and filed a negative final report. On notice, the petitioner complainant filed a protest petition. The trial court accepted the final report and

dismissed the protest petition. Against that order, the petitioner filed a revision petition before the revisional court which too came to be dismissed by the revisional court. It appears from the facts available on record that a complaint under Section 138 of the Negotiable Instruments Act, 1881 (for short 'the Act' hereianfter) was filed by the complainant against the present petitioner being criminal Complaint Case No. 385/04 on the ground that the petitioner issued a cheque in favour of complainant therein which on presentation to the bank was dishonoured on the ground of insufficient fund in the account of the petitioner. The petitioner failed to pay the cheque amount within the statutory period of notice after having been served with the notice by the complainant therein. The petitioner came with a plea in that complaint case under Section 138 of the Act that the cheque and the pro-note duly signed by him were given as security.

The trial court prima-facie came to the conclusion that in the case lodged against the petitioner under Section 138 of the Act, cognizance has been taken by the Court against the petitioner and the present FIR has been filed to defend that case.

In Sunil Kumar Vs. Escorts Yamaha Motors Ltd. and Others 1999 SCC (Cr.) 1466, Hon'ble Supreme Court held that apart from the fact that the said cheques did not make out the offence of cheating or criminal breach of trust, attendant

circumstances indicated that FIR was lodged to preempt the filing of complaint under Section 138 of the Act against the appellant therein and in those circumstances, the Apex Court held that the quashing of the FIR was well within the jurisdiction of the High Court as the FIR amounted to abuse of process of the Court. A similar view has been taken by this Court in S.K.Gulati and Ors. Vs. State of Rajasthan and another 2004(3) R.Cr.D., 250 (Raj.).

In the instant case, a complaint under Section 138 of the Act has been filed against the petitioner and thereafter the petitioner filed the FIR in question, which prima-facie shows that the said FIR has been filed to preempt the filing of complaint under Section 138 of the Act against the present petitioner, and therefore, keeping in view the decision of Hon'ble Supreme Court in Sunil Kumar Vs. Escorts Yamaha Motors Ltd. (supra), in my view, both the courts below were justified in accepting the negative final report filed by the police and dismissing the protest petition. It cannot be said that the orders impugned would result in serious miscarriage of justice or abuse of process of any Court warranting interference in the inherent jurisdiction.

The petition has no force and it is therefore, dismissed.

(H.R.PANWAR),J.

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